

Journalism

Responsible Communication- between the Judicial and Deontological Norm

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Abstract: Confronting with numerous problems related to moral judgment, the responsibility and irresponsibility in what concerns the vast domain of communication, we are interested in forming a correct and complete vision that crosses the judicial and deontological domain of the profession. The deontological norms are meant to guarantee, by their freely consented acceptance, the good fulfillment of the mission of the journalists, recognized as being indispensable for the good functioning of any human society. The laws do not expressly refer to the deontological norms, but these norms exist according to the law order and are necessary for its guarantee in this social context, which is chaotic from the point of view of the legislation in communication. The aspects analyzed here are meant to indicate the manner in which passing from deontological norm to the judicial norm creates an external constraint for the communicator which brings more responsibility in view of avoiding the journalistic conflicts.

Key words: freedom of speech; professional ethics; coercion procedures; right of reply

In most of the judicial systems, the law and the deontology are not clearly demarcated. In the deontological codes there are interdictions normally included in the law or we find them most of the times we find them explicitly mentioned, as the journalist's obligations that can be imposed by law, either in all states or in some of them. Certain actions are convicted at the same time by law and by deontology. The laws and the regulations establish a frame in which each practitioner can choose to have different behaviors. Deontology establishes in this context a narrower frame, leaving the possibility to choose, which is made by the individual according to his/her personal opinions. (Bertrand, 2000)

The law and the normative acts represent in general a very important category of sources of law in all the legal systems, with a predominant character in the modern

and contemporary period. The customary law couldn't and cannot ensure by itself the regulation, consecration and defense of the social relations and this is the reason for which normative judicial acts, written law appear, in opposition with the customary and unwritten law. In all the states and in all the legal systems where there are multiple categories of normative judicial acts, the first place is held by the law. Under the definition of normative act appear all the judicial norms laid down by the state organs: law, decree, decision, code, regulation, constitution etc. In principle, the title "law" is given to define the normative act with a superior judicial force adopted by the supreme power organ of the state. This category includes also the Constitution, as a fundamental law as well as the Code. From here derives the most general classification of the normative acts, in laws and normative acts subordinated to law. (Mazilu, 1999)

The judicial norm is a constitutive element of law, is a conduct rule instituted by the public authority or recognized by it and whose compliance is ensured when needed by the coercive force of the state. The purpose of the judicial norm is to ensure the social cohabitation in the direction of the promotion and consolidation of the social relations according the ideals and values governing the society. By the judicial norms the interpersonal relations are regulated in specific forms as the judicial norm is the constitutive element, or the "basic cell" of law. (Mazilu, 1999)

In case of the judicial norm, the coefficient of obligation and interdiction ("has to punish" becomes "will be punished") is at maximum rate. The obligation and the interdiction are manifested under the form of constraint, applied only in the case of non respecting the judicial law, under the form of sanctions. (Căţineanu, 2008)

Reported to the media, these judicial sanctions trigger the external constraint¹ by passing from norm to set of norms which create an eternal conflict for the individual, between freedom and any norm. The law is manifested as censure and this is a direct violation of the right to express an opinion. The freedom to have an opinion and the freedom of speech attract dialogue and verbal confrontation within limits that the deontology and law incriminates.

Respecting the right to truth and the right to have an opinion has to be taken in consideration both from a deontological perspective, as well as from a judicial one. The journalists have to get to the truth, produce it and express it and the public has

¹ George Reedy, quoted by Tudor Căţineanu in *Media Deontology*, 2008: "If I am chained, it doesn't matter if I was chained by the government (through law), by my colleagues (by codes) or by myself (self regulation), the point is that my freedom was taken away".

to correctly receive it and sustain it. Each code of journalistic ethics begins with the duty of the journalists to tell the truth, the credible language being fundamental in the communication process. (Cățineanu, 2008) The journalist has to mold his/her opinion according to a set of deontological values in which responsibility towards the public is essential.

The opposite of the respect for the truth is deceit, meaning the intention of deliberately mislead, deceit at the level of collecting information being a permanent temptation for journalists, making it easier to guarantee information. (Clifford G., Mark, Kim B., & Kathy B., 2001) We have to mention that collecting information under false pretexts will never be justified ethically or from a judicial perspective.

The deontology defines “what is necessary”, what is adequate and correct. In usual terms, deontology represents the analysis of what a person should do, meaning the actions and decisions necessary in a specific situation, adequate and appropriate in those circumstances. The German philosopher Immanuel Kant is deontology’s most fervent defender, concentrating on the duties and rules that are inherent to an ethical action mode. Morality from Kant’s point of view has its source in reason. The moral rules represent more arbitrary conventions or subjective standards and at the same time, objective truths deriving from the reasonable nature of humans. (Deaver, 2004) The moral duty represents the necessity’s modality in the moral scope, being the referential category of deontology. In essence, the duty comprises the great fundamental affirmations of wealth, safety, protection; it is the expression of requesting the proper and the refuse of bring prejudice. (Arsith, 2010)

Journalism has created more and more stability in establishing the borders of its field of activity. This process was not finalized until today: the appearance and development of new technologies has led to the appearance of new media, new press products and so, new roles and professional typologies. In time, journalism has gone through a difficult road, from job or passion to the one of plenary profession, creating an ideology of its own and a professional legitimacy. Journalism won a bigger autonomy in exerting specific activities, has shaped deontological norms and values and became a definitive occupation, motivating for its members.

Professionals from the field of mass communication believe that many times, it is the public’s responsibility and not the communicator’s to find a meaning in the information activity, a persuasion and entertaining feature and deal with their consequences. The communication specialist should be preoccupied by the

consequence of their immediate actions but also the long term actions should be preoccupied by the tolerance towards ambiguity and the unsolved dilemma, the difficult process, judgment of things and a feeling of moral duty. (Arsith, 2010)

The professional connection between the media, private or public organizations and the public is created by the specialists in the public relations field, who follow the interest of the organization in relation to them by establishing a responsible communication. Responsibility in this case regards the real aspects of the organization and the appetite the journalists have for “the good news” is limited. (Gregory, 2005) Any good communicator will offer an interesting feature to the information that the organization wishes to mediate and will have to fight through a correct approach and a prompt reaction, with the information capacity to simplify in an excessive manner or give aspects a sensational sense.

If the judicial norm can be defined as a rule of general and impersonal conduct instituted by the public authorities or recognized by them, whose compliance is ensured when needed, with the state’s coercive force, the deontological norms are conduct and ethical duty norms, specific to a professional activity that have to be respected by the person deploying an activity within an institution. The deontological norms have, as a starting point, the judicial norms and are meant to guarantee, by their freely consented acceptance, the good fulfillment by the journalists, of their mission, recognized as being indispensable for the good functioning of any human society. The laws do not expressly refer to the deontological norms, but they are in accordance with the judicial order and are necessary for its guarantee. The compliance of the statutory dispositions represents a contractual obligation and they maintain the work discipline so that their violation can attract the disciplinary liability. (Cercescu, 2004)

At the level of the editorials statutes are established, containing norms of professional conduct ensuring the development, in proper conditions according to ethics and deontology, of the journalistic activity. Thus, these forms refer to the editorial activity only and they are different from the personnel statutes and the internal regulations of the press enterprise, that contain dispositions regulating the relations between all the employees, no matter the function they occupy. In this context, the norms contained by the Journalist’s Deontological Code¹ regard only the professional conduct, the role and the rights of the journalists in relation to the

¹ Elaborated by the Convention of the Media Organizations, in Sinaia, June 9-11, 2004.

rules of writing, protection of sources, collecting information, independence, state abuse and error correction.

The statute of the journalist profession implies a different statute and deontology, reported to the role and the functions of journalism in the social relations' scope. This is the reason why the journalistic activity is regulated not only by the state norms but also by some statutory norms elaborated according to the legal judicial frame, but that are characteristic to this typical journalistic frame. These statutory norms can be comprised in statutes or deontological codes of journalists, elaborated within the editorials or professional associations.

The deontological code is elaborated by professionals and codifies an activity in itself, with its own liberties and responsibilities. The deontological code target in the first place the common activity and in the second place the liberties and the responsibilities of each individual. Is responsibility has a moral nature the liability is of judicial nature, the concern for the facts being based on the respect for the judicial norms, concretized in laws. (Căţineanu, 2008)

The moral norms and the professional ones create the space on interdictions specific to the deontological norms, being both professional and moral, codified according to the case in each profession. The journalists represent a group of professionals that are classified according to more criteria, among which the most important are the form of expression (written press, radio, TV). According to these differences, there are many possible forms of deontology and different codes, determined by the group of professionals, which are based on the system of specific norms and principles that have to be integrated and coordinated according to the concepts of the discipline and correctness. As a representative of the Romanian journalists, the Romanian Press club has adopted the Deontological Code of the Journalist, which represents the base of this profession.¹

The means of communication and bring prejudice without breaking the law. Some acts authorized by the law can be contrary to the deontology and it can happen that these tolerate illegal acts, as the ones usurp an identity or steal a document in order to prove a scandal bringing a serious prejudice to the general interest. (Bertrand, 2000)

¹ In the preamble of the code there is stated: any person can be a journalist, reporter, photo reporter, illustrator, editorial secretary, department manager, editor or second editor, publication, radio or television manager, with a seniority of over 1 year.

The deontological principle of correctness sends us to the one of consistency, valid both ethically as well as from a deontological point of view. A journalist cannot assert and write one thing and then deny it or not recognize it. Deontology offers thus mechanisms to correct errors by the right to rectification and the right to reply.

Each time these judicial or deontological norms are broken, the specific correction procedure intervenes. The breaches in respecting the deontological norms trigger the promotion of non values, which necessitates the application of some procedures of correction usually meant to attract the disciplinary liability of the journalist. Breaking the judicial norms brings many more forms of judicial liability, among which the most serious is the criminal one. The critical attitude can gain momentum, as a mechanism of judicial correction, in two aggressive forms, stated as crimes in the Romanian Criminal Code, namely the insult and calumny. In order for an appreciation to be slanderous, it has to have a defamatory character, a public one and it has to be done regarding an identifiable person, who has suffered from prejudice following the affirmations which were false or incorrect.¹

Thus, if the judicial norms are can attract sanctions, the deontological and professional norms ensure efficiency and humanity. As long as the judicial norms impose the mandatory compliance, the others are characterized by the practice of the profession by instruction and education.

The judicial norm incriminating calumny can attract, besides the judicial sanction in criminal law and the rectification of the point of view, by granting the right to a response or the right to reply. We can request the rectification anytime we wish to correct certain aspects from the informational scope of an opinion expressed publicly. The right to answer intervenes anytime a specialist is appealed to, in the medical domain, for example and that person has the duty to offer a response, only if the affirmations made public regard him/her directly. The audio-video rectification is broadcasted irrespective of the fact that there is a request from the prejudiced person, when the information made public is proved to be wrong.

The compliance with right to reply is guaranteed both by the Deontological code of the Journalist, every time the request is proven to be righteous and reasonable, as well as by the Audio video law no.504/2002 that, in article 41 states the right to reply and the right to rectification granted as many times as the presentation of

¹ The Romanian Criminal Code, republished, defines calumny in Article 206, al.1, as being: “The affirmation or imputation in public, by any means, of a determined action regarding a person that, if it were to be true, would expose that person to a criminal, administrative or disciplinary penalty, punished with imprisonment or a fine”.

inaccurate facts within a program brings prejudice to the reputation and public image of a private or legal person.

The law provisions confidentiality in the judicial investigation but under the appearance of its deployment, abuse or crimes cannot be covered, committed by the ones handling the case. The defective communication between the media and the judicial organs is caused by multiple disclosures of judicial abuse in cases of public interest. (Cercescu, 2004) The journalists have gained the right to control their activity over justice by including information favoring or hiding the breaches of law by a public institution or authority, in the category on public interest.¹ They can present information about an ongoing investigation can present the facts making the object of incrimination, but these have to be made in accordance with the principle of presumed innocence of an individual. At the international level, the Resolution no.1003/1993 on journalistic ethics elaborated by the Parliamentary Assembly of the Council of Europe guarantees the compliance with the principle of presumed innocence² by abstention from formulating verdicts that are groundless.

In the same spirit of the fairness, the right to reply is exerted usually on the grounds of tension and atmosphere of conflict but when this stems from a public institution it is all characterized by seriousness and gravity. We can mention here the right to reply³ deriving from an article published in the “Cotidianul Oline” newspaper which had errors regarding criminal grounds handled by the National Anticorruption Directorate and on the role of a judicial instance. The National Anticorruption Directorate states that fact that in no circumstance the Constitutional Court evaluates evidence from the file, but only analyzes if the provisions of the laws governing the criminal lawsuit are in accordance with the Romanian Constitution. What triggered the reaction of the authorities was the content of the expressions “unconstitutionality of many of the evidence in the NAD files” and “blocking of some files from lack of solid evidence”, qualified as not being in accordance with the facts.

The deontological norm folds here on the judicial norm, granting the right to reply, a symmetrical and optimal feature. The emission or publication is made with the same characters, on the same page of the newspaper, in the following edition.

¹ Article 13 in Law no. 544/2001 on the free access to information of public interest, published in the Official Monitor, no. 663/23.10.2001.

² Article 22 in the Resolution 1003/1993 on the journalistic ethics, published in the Official Monitor no. 265/1994.

³ Article published on 16.04.2010, available on www.pna.ro.

Irrespective of the means of expression, the journalist has to correct any errors appearing in his materials, a duty that is both moral, imposed by the deontological norms, as well as legal, imposed by the judicial norms.

The reason of the right to reply resides in defending the respect of the individual in society by the possibility offered by law that this person is presenting the explanations and reserves towards the circumstances that led to their nomination in the press.

In order that the citizens' life as reflected by the journalists can produce understanding and correction of injustice, they have the duty to establish a correct balance between the public interest and the private interest, between the public value of the information and their private value. The liability of the journalist should cover both the abnormality scope, in order to correct it, as well as the normality one, in order to protect against indiscretion and abuse. (Runcan, 1998)

The deontology and the law obligate to comply with these rules and this compliance is equivalent to fairness. (Căţineanu, 2008) In opposition to the activity of the writer, the essence of the journalists' activity is not the art of writing, but the art of searching and verifying the information. Only if the investigation is successful, he becomes a creator of products, with the impress of personality. It has been stated that a good reporter has to have the sense of initiative, the availability to move fast and efficient in different places, flexible (to change faced with unpredictable situations), work power in leaps, capacity to adapt fast (to change the initial strategy according to the partners' reactions), curiosity and fluency in communication. (Coman, 1999)

Confronted with different problems regarding moral judgment, the responsibilities and irresponsibilities in what concerns the vast domain of communication, we are interested in forming a correct and solid vision in the judicial and deontological domain of the profession. In this social context, chaotic from the perspective of the legislation in communication, we have to mention and appreciate the attempts of the special organisms¹ to respect and protect their scope, by concretizing specific ethical and deontological codes, both at national as well as at international level.²

¹ The Professional Journalists Society, the Romanian Press Club, the Association for protecting and promoting the freedom of speech, the Centre for independent journalism, the Association of the journalism and communication makers, the International Association of public relations, the Association of radio and television news, etc.

² The Code of ethics of the Professional Journalists Society, the Ethical Code of the National Association of Photographers, The Professional Statute of the Journalists, The Convention of Media

Thus, as noticed, formal or with reasonable and affective participation, the journalists, members of unions or simple employees of press enterprises have invested and are still doing it, in deontological codes trust and respect, aiming not only to create the state law, but a form of coagulation of the communication specialists, around essential values, not only for the good deployment of their activity, but for the communication between people around the world. (Runcan, 1998)

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Organizations in Romania, the Deontological Code of the Journalist, the Code of the Association of the journalism and communication makers, the code of Professional Standards in Public Relations, the Ethics Code of radio and television programs, etc.